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In the Supreme Court of the United States

OCTOBER TERM, 1977

DONALD R. GRATEHOUSE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington D.C. 20530.

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Petitioner, claiming that his resignation was invalid, seeks reinstatement and back pay as a civil service employee.

On March 19, 1971, petitioner, then an economist at the Department of Housing and Urban Development ("HUD"), was notified by his supervisor that a within-grade merit salary increase ("WGI") would be "indefinitely withheld" and that his work was "not of a caliber to merit continued employment" (Pet. App. 20-22). At petitioner's suggestion, HUD granted the WGI—thereby giving petitioner a clear personnel record—in return for petitioner's resignation. Three months after the resignation was submitted, and two days before it became effective, petitioner requested that it be returned to him. The agency refused and petitioner appealed to the Civil Service Commission.

An appeals examiner determined that the agency lacked an acceptable reason for denying petitioner's request and ruled that formal proceedings were required for an adverse action of separation (Pet. App. 24-26). The Appeals Review Board, however, overturned that ruling (*id.* at 27-30). Petitioner then brought suit in the Court of Claims, which remanded to the Civil Service Commission for a hearing on petitioner's claim that his resignation had been coerced (*id.* at 31-42). The hearing board ruled in petitioner's favor (*id.* at 43-64), but the Appeals Review Board reversed again, ruling that petitioner's resignation had been voluntary (*id.* at 65-71). The Court of Claims agreed with the Board's view of the evidence and upheld its decision (*id.* at 74):

> "[Petitioner] initiated the resignation and got what he bargained for in exchange—a clear record, his WGI, no action with respect to removal for cause, and, continuation on the agency's rolls for three months while he searched for other employment. The agency did not deceive nor default."

The court also rejected petitioner's argument that his WGI had been granted improperly and that his resignation was therefore void (*id.* at 75).

The decision of the Court of Claims is correct and further review is not warranted. The validity of a Civil Service employee's resignation is determined by its voluntariness. According to the Federal Personnel Manual, the request for separation is voluntary "if the employee is free to choose, understands the transaction, is given a reasonable time to make his choice, and is permitted to set the effective date." F.P.M. Supp. 752-1, Subch. S1-2a(2). The request is not made involuntary merely because the employee has chosen among the "unpleasant alternatives" open to him. F.P.M. Supp. 752-1, Subch. S1-2a(3). As the Court of Claims correctly

ruled, petitioner's resignation was voluntary. It was submitted as part of a bargain initiated by and beneficial to petitioner; he was fully informed as to his options; and he chose a separation date that allowed him ample time to seek other employment.[1]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.,
Solicitor General.

OCTOBER 1977.

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[1]Petitioner's claim that his resignation was invalid because it was exchanged for a WGI that HUD was without authority to award is not well taken. Petitioner requested—and accepted and retains—the WGI in exchange for his resignation. In these circumstances, petitioner is estopped from complaining that, pursuant to a bargain that he initiated and that has been fully executed, he has been granted an award to which he was not entitled. See *Whitfield* v. *United States*, 92 U.S. 165, 169-170.